

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JENN-CHING LUO

v.

OWEN J. ROBERTS SCHOOL
DISTRICT, et al.

CIVIL ACTION
NOS. 14-6354, 15-4248

OWEN J. ROBERTS SCHOOL DISTRICT

v.

B.L., by and through his Parent,
Jenn-Ching Luo.

CIVIL ACTION
NO. 15-2952

ORDER

AND NOW, this 27th day of October, 2016, upon consideration of plaintiff Jenn-Chin Luo's objections to the report and recommendation by United States Magistrate Judge Carol Sandra Moore Wells in Civil Action No. 14-6354,¹ it is ORDERED that the report and recommendation is APPROVED and ADOPTED IN PART as follows:

1. Defendant Skidmore's motion to dismiss (Dkt. No. 21) is GRANTED and all claims against Skidmore are DISMISSED WITH PREJUDICE.
2. Defendant Montayne's motion to dismiss (Dkt. No. 14) is GRANTED and all claims against Skidmore are DISMISSED WITH PREJUDICE.

¹ I considered the following documents in making this ruling: the motion to dismiss of defendants Geoffrey Ball and the Owen J. Roberts School District (Dkt. No. 12), the motion to dismiss of defendant Sharon W. Montayne (Dkt. No. 14), the motion to dismiss of defendant Cathy A. Skidmore (Dkt. No. 21), the motion to dismiss of defendant Keri Kolbay (Dkt. No. 22), plaintiff Jenn-Ching Luo's responses to these motions (Dkt. Nos. 25, 26 and 28), defendants' reply briefs (Dkt. Nos. 27, 29, 30 and 32), the report and recommendation by United States Magistrate Judge Carol Sandra Moore Wells (Dkt. No. 35), plaintiff's objections (Dkt. No. 38), defendants' responses to plaintiff's objections (Dkt. Nos. 40, 41, 43 and 45), plaintiff's supplemental brief to oppose defendant Skidmore's response (Dkt. No. 42) and plaintiff's motion to strike (Dkt. No. 44).

3. Defendant Kolbay's motion to dismiss (Dkt. No. 22) is DENIED WITHOUT PREJUDICE to her right to reassert her arguments regarding qualified immunity and failure to identify a protectable liberty interest in a motion to dismiss a second amended complaint.
4. Defendants Ball and Owen J. Roberts School District's motion to dismiss (Dkt. No. 12) is GRANTED IN PART AND DENIED IN PART:
 - a. All Fifth Amendment claims are DISMISSED WITH PREJUDICE.
 - b. All claims against the School District (claims 1–3 and 5–8) are DISMISSED WITHOUT PREJUDICE to plaintiff's right to re-plead these claims in a second amended complaint.
 - c. The motion to dismiss claims against Ball is DENIED WITHOUT PREJUDICE to reassert his arguments regarding qualified immunity and failure to identify a protectable liberty interest in a motion to dismiss a second amended complaint.
 - d. To the extent the amended complaint alleges IDEA claims against the individual defendants or any violations of IDEA, these claims are DISMISSED WITH PREJUDICE.
5. Plaintiff's motion to strike (Dkt No. 44) is DENIED.

Upon consideration of defendant, counterclaim-plaintiff and third-party plaintiff Jenn-Chin Luo's objections to the report and recommendation by United States Magistrate Judge Carol Sandra Moore Wells in Civil Action No. 15-2952,² it is ORDERED that the report and recommendation is APPROVED and ADOPTED as follows:

² I considered the following documents in making this ruling: defendant, counterclaim-plaintiff and third-party plaintiff Jenn-Chin Luo's motion for judgment on the pleadings as to the complaint (Dkt. No. 10), plaintiff and counterclaim-defendant Owen J. Roberts School District's response (Dkt. No. 15), Luo's reply (Dkt. No. 18), the District's motion to dismiss Luo's counterclaim (Dkt. No. 16), Luo's response (Dkt. No. 20), the motion by third-party defendants Sharon Montayne, Jonathan Riba and Sweet Stevens Katz & Williams LLP's to dismiss the third-party complaint (Dkt. No. 19), Luo's response (Dkt. No. 21), the report and recommendation of United States Magistrate Judge Carol Sandra Moore Wells (Dkt. No. 23),

1. Luo's motion for judgment on the pleadings (Dkt. No. 10) is DENIED.
2. The District's motion to dismiss Luo's counterclaim (Dkt. No. 16) is GRANTED and the counterclaim is DISMISSED WITH PREJUDICE.
3. Third-party defendants' motion to dismiss (Dkt. No. 19) is GRANTED and the third-party complaint is DISMISSED WITH PREJUDICE.

Upon consideration of plaintiff Jenn-Chin Luo's objections to the report and recommendation by United States Magistrate Judge Carol Sandra Moore Wells in Civil Action No. 15-4248,³ it is ORDERED that the report and recommendation is APPROVED and ADOPTED IN PART as follows:

1. Defendant Montayne's motion to dismiss (Dkt. No. 5) is GRANTED and all claims against Montayne are DISMISSED WITH PREJUDICE.
2. The motion to dismiss by the District, Ball and Schneider (Dkt. No. 7) is GRANTED IN PART AND DENIED IN PART:
 - a. Claims 1, 3, 7, 8, 9, 10, 11, 12 and 13 are DISMISSED WITH PREJUDICE.
 - b. Claims 2, 4, 5 and 6 are DISMISSED WITHOUT PREJUDICE to Luo's re-filing of these claims in a second amended complaint in Civil Action No. 14-6365.
3. Civil Action No. 15-4248 shall be marked CLOSED.

Luo's objections (Dkt. No. 26), third-party defendants' response to the objections (Dkt. No. 28) and the District's response to the objections (Dkt. No. 29).

³ I considered the following documents in making this ruling: the motion to dismiss by defendant Sharon Montayne (Dkt. No. 5), the motion to dismiss by defendants Geoffrey Ball, Owen J. Roberts School District and Brian Schneider (Dkt. No. 7), plaintiff Jenn-Chin Luo's responses (Dkt. Nos. 10 and 11), the report and recommendation of United States Magistrate Judge Carol Sandra Moore Wells (Dkt. No. 12), plaintiff's objections (Dkt. No. 15) and defendants' responses (Dkt. Nos. 17 and 18).

IT IS FURTHER ORDERED that Luo shall have thirty days from the date of this order in which to file a second amended consolidated complaint in Civil Action No. 14-6354 setting forth all claims not dismissed with prejudice in either Civil Action No. 14-6354 or Civil Action No. 15-4248. Plaintiff shall provide a short and plain statement of her grounds for relief, combining like claims and including all factual allegations relating to a particular claim within a single count.

IT IS FURTHER ORDERED that Civil Action No. 14-6354 and Civil Action No. 15-2952 shall be consolidated for administrative purposes. The Clerk shall docket all filings on these consolidated matters under Civil Action Number 14-6354.

/s/ Thomas N. O'Neill, Jr.
THOMAS N. O'NEILL, JR., J.